ORIGINAL

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Request For Amendment of the	)	RM-9405
Commission's Rules Regarding The	)	
Establishment of a Public Service Radio	)	
Pool In The Private Mobile Frequencies	)	
Below 800 MHz	)	

TO: The Commission

REPLY COMMENTS OF MRFAC, INC.

MRFAC, Inc., by its counsel, hereby submits reply comments on aspects of the above-referenced Petition for Rulemaking and, in particular, certain of the opening comments.

In its own opening Comments, MRFAC urged that the Petition be denied as representing a re-hash of arguments already once raised before, and rejected by, the Commission. MRFAC also stressed that the Petitioners' definition of "critical infrastructure industries" is incomplete; for example, the Petition fails to recognize the important implications for general public safety of many manufacturing complexes and of the airline industry, to name just two categories excluded by the Petition. If nonetheless the Commission should choose to revisit its earlier determination, MRFAC urged that any separate frequency pool be based on safety-related uses, not the nature of the user, and that frequencies historically shared with the Petitioners prior to consolidation not be diverted to their exclusive use.

Other commenters concur with MRFAC's position noting, among other things, that the coordination process post-consolidation is still new and that the Petitioners already have at their disposal the tools necessary to object to any problematic coordination which could impact one of their members.[1]

Other parties likewise concur with MRFAC's assessment that, as framed by the Petition, the relief requested would extend to applications filed by Petitioners' affiliates looking to establish for-profit carrier communications systems, as a number of UTC's members have done -- not internal use systems.[2] In such a scenario U.S. manufacturers could find increasingly scarce spectrum resources further diverted to carrier uses, a problem which already afflicts industrial users.

To be sure, a number of utility companies filed in support of the Petition. However, most of these commenters simply express concern about the "present system of competitive frequency coordination" or the possible risk of interference, without supplying even one instance where coordination did not work -- much less anything like a sufficient number of instances to establish a widespread pattern of problems as opposed to isolated events.[3]

Moreover, in instances where a utility expresses concerns about their employees' safety, there appears to be nothing unique about the Petitioners' employees as

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[1] See e.g., Comments of The Personal Communications Industry Association, Inc. at 3.

[2] See Opposition of Petroleum Communications, Inc.

[3] Comments of New England Power Service Company at 2; see also, e.g., Comments of James P. Phinney, Manager of McCook Public Power District; Washington Gas Light Company; Benton County Public Utility District No. 1. As PCIA observes, a handful of coordinations per year out of 30,000-plus hardly indicates a pattern of problems. Id. at 9.

opposed to those in a number of other industries -- many of whom are exposed to hazardous situations every bit as immediate and life-threatening as employees of the Petitioners. Much manufacturing, for example, involves hazardous processes and materials which present a clear and present risk to worker safety. For instance, in 1997 there were 477,000 nonfatal occupational injuries in the transportation and public utilities industries. By contrast, the manufacturing industry, including durable and nondurable goods, suffered three times as many injuries, i.e. 1,662,100.[4]

MRFAC disagrees with the proposal by Industrial Telecommunications Association, Inc. for mandatory protected service contours confined to the power, petroleum and railroad industries. Such a proposal is both premature and inappropriate: The Commission has the issue of rules and policies for exclusivity below 512 MHz under consideration in the re-farming docket. See Report and Order and Further Notice of Proposed Rule Making, FCC 95-255, released June 23, 1995 at paras. 129 et seq. One of the issues to be resolved in that proceeding is the criteria which will govern protection of exclusive use systems -- criteria which will apply to all users employing spectrally-efficient technology. Id. at para. 132. Rather than attempt to deal with protected service contours in the context of just this Petition, the issue should be addressed based on the fuller record developed in PR Docket No. 92-235. (Indeed, the Commission should finish refarming and the Commission, along with the Petitioners and other PMRS users, allow time for the re-farming processes to mature before considering changes. Adopting

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[4] *Workplace Injuries and Illnesses in 1997*, Bureau of Labor Statistics, USDL 98-494, Table 2 (December 17, 1998).

Petitioners' proposals now may only cause further problems as time goes on.) Moreover, any exclusivity that might be adopted should be available for all mission-critical Part 90 systems, not just the Petitioners'.

UTC and others reference a recent Congressional letter expressing concern about interference to the Petitioners' communications systems. Significantly, however, that letter does not prescribe -- it does not even attempt to prescribe -- the best means of dealing with the issue. In other words, the Commission retains a full measure of discretion to decide whether and how best to address the Petition.

If, despite the foregoing, the Commission should still be of a mind to consider some form of relief, MRFAC would propose a modest adjustment to the current frequency coordination process. Currently, that process allows transmittal of a coordinated application to Licensing and Technical Division with the responsibility imposed upon other coordinators to query the first coordinator's database on a regular basis in order to remain abreast of pending proposals. The Commission could, instead, require the initiating coordinator to affirmatively transmit each day's coordinations to other coordinators with a brief waiting period (say two to three days) allowed to elapse before the initiating coordinator actually transmits the applications to the Division. In this way, the Commission would afford a better opportunity for the protection of existing licensees (including, but not limited to, the Petitioners' members) from interference, particularly interference that would be caused by applicants planning to begin operation upon filing pursuant to Rule 90.159.

For these reasons and those stated in its Comments, MRFAC urges the Commission to deny the Petition.

Respectfully submitted,

MRFAC, Inc.

By: 
William K. Keane

ARTER & HADDEN LLP
1801 K Street, N.W., Suite 400K
Washington, D.C. 20006-1301
(202) 775-7123

January 7, 1999

Its Counsel

CERTIFICATE OF SERVICE

I, Joseph C. Fezie, hereby certify that a true copy of the foregoing "Reply Comments of MRFAC, Inc." has been mailed to the following by First Class United States mail, postage prepaid, this 7th day of January, 1999:

Jeffrey L. Sheldon, Esq.
Thomas Goode, Esq.
UTC, The Telecommunications Association
Suite 1140
1140 Connecticut Avenue, N. W.
Washington, D. C. 20036

Wayne V. Black, Esq.
Nicole Donath, Esq.
Keller and Heckman, LLP
1001 G Street, N. W.
Washington, D. C. 20001
Counsel for American Petroleum Institute

Louis P. Warchot, Esq.
Senior Vice President - Law and General Counsel
Association of American Railroads
50 F Street, N. W.
Washington, D. C. 20001

Mr. Michael D. Feinman
Manager of Protection and Process Engineering
New England Power Service Company
55 Bearfoot Road
Northboro, Massachusetts 01532

Mr. James P. Phinney
General Manager
McCook Public Power District
P.O. Box 1147
McCook, Nebraska 69002

Paul S. Buckley, Esquire
Washington Gas Light Company
1100 H Street, N. W., 12th Floor
Washington, D. C. 20080

Mr. Jim Sanders, Manager
Benton County Public Utility District No. 1
P.O. Box 6270
Kennewick, Washington 99336

Ms. Mary McDermott
Senior Vice President
Chief of Staff, Government Relations
Personal Communications Industry Association
Suite 700
500 Montgomery Street
Alexandria, Virginia 22314

Richard S. Myers, Esquire
Myers Keller Communications Law Group
Suite 1100
1522 K Street, N. W.
Washington, D. C. 20005
Counsel to Petroleum Communications, Inc.

Joseph C. Fezie